

REMARKS

Claims 1-20 are pending in the application.

Applicants thank the Examiner for the courtesies extended to the undersigned during the teleconference of December 8, 2006 which was necessitated as a result of an apparent omission and contradiction in the November 17, 2006 Office Action Summary in the PTOL-326, as well as some bases for rejection that did not appear consistent in light of the prior response filed August 7, 2006.

Specifically, the Office Action Summary failed to indicate a period for a reply and also indicated that the application is in condition for allowance, and prosecution as to the merits was closed. In the aforementioned teleconference, the Examiner confirmed the shortened statutory period for a reply is set to expire three (3) months from the mailing date of the communication, and that the application is not in fact in condition for allowance, that prosecution on the merits is not closed and the action of November 17 is non-final.

We also inquired as to the reasons for the continued rejection based on the primary reference of Manginell et al., U.S. Patent No. 6,527,835, given the Declaration that was previously filed under 1.131 in the response filed August 7, 2006. No reference to this Declaration was acknowledged, let alone discussed, in this Office Action. The Examiner suggested the Applicants respond to the present Office Action by pointing out the Declaration and the response filed August 7, 2006.

Accordingly, Applicants reiterate herein the response/arguments made in the August 7, 2006 response, and direct the examiner's attention to the Declaration filed that same day. The remarks of the August 7, 2006 response are set forth in full below for the convenience of the examiner, along with a copy of the previously filed Declaration.

REMARKS OF AUGUST 7, 2006

Enclosed herewith is a Declaration of the Somenath Mitra, the first named inventor of the application. In view of the Declaration and the following discussion, Applicants submit that all pending claims are in condition for allowance.

Claim Rejections

In the Office Action on page 2, paragraph 1, claims 1-2, 5 and 10-11 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,527,835 to Manginell et al. ("Manginell").

Applicants respectfully traverse this rejection. Enclosed is a Declaration under 37 CFR §1.131 wherein the first named inventor herein, Dr. Somenath Mitra, declares he invented the claimed subject matter at least as early as June 1998, which is well before the filing date of Manginell. Manginell was filed December 21, 2001. Attached to Dr. Mitra's declaration are copies of pages from his lab notebook evidencing conception of the claimed subject matter. Dr. Mitra further declares he was diligent from the time of conception through the time the application for the present invention was filed.

Based on the foregoing, Manginell is effectively removed as a reference, hence the rejection based thereon should be withdrawn.

On pages 2-5 of the Office Action, paragraphs 3-8, a variety of rejections were made under 35 U.S.C. § 103(a) using Manginell as the primary reference. Because Manginell is removed as a reference, these rejections are likewise overcome. Applicants respectfully request these rejections be withdrawn.

Applicants submit that all claims pending in the patent application are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issuance are earnestly solicited. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

Application No. 10/735,989

Attorney Docket No. 436/12

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Respectfully submitted,

s/Timothy X. Gibson/

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